DEPARTMENT OF BUSINESS OVERSIGHT
Ensuring a Fair and Secure Financial Services Marketplace for all Californians

Jan Lynn Owen
Commissioner of Business Oversight

May 8, 2017

Re: Opinion Request

Dear _____:

Thank you for your letters to the Department of Business Oversight dated January 6, 2017 and March 20, 2017. _____ requests a determination that Financial Code section 2010, subdivision (l) will exempt certain business activities from the reporting requirements of the Money Transmission Act.

BACKGROUND

_____ facilitates the purchase of digital goods on the _____ website via an online games marketplace. The marketplace enables developers to sell digital goods to users via in-game purchases.[1] To make a purchase in the marketplace using _____, a user must provide a valid funding instrument such as a credit card, debit card, _____ gift card, or other payment method.[2] When the user makes an in-game purchase, _____ charges the user's funding instrument. The funds are deposited into a particular _____ account at _____ depending on the payment method[3] and then transferred, less a service fee, to the appropriate developer.[4]

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[1] The following is an example of the sale of digital goods via in-game purchases: In a game called "_____" a user can click on a ____ sign to initiate the purchase of ____ which can help the user advance in the game. When the "+" sign is clicked, a purchase window opens and gives the user options of items to buy such as 10 ____ for $0.99, 50 ____ for $4.99, etc. When the user selects an item and clicks "Buy," a payment window appears allowing the user to select a payment method such as a credit card or _____ account. Once a payment method is chosen and the transaction is completed, the user is provided with a receipt and immediately receives the digital good. Here, the additional ____ appear in the game.

[2] Other payment methods include _____ accounts and mobile phone payments, also known as "carrier billing" where the charges are applied to the user's mobile phone bill.

[3] For instance, user payments made with ____ or ____ are deposited into one account at _____ while payments made through _____ are deposited into another account, etc. Funds from each account are swept daily into a master "Customer Funds" account.

[4] Developers using _____ maintain a "Developer Balance" with _____. A Developer Balance does not involve an electronic value balance; it only refers to the amount outstanding to a particular developer. Amounts owed to developers are paid out regularly to each developer's designated bank account or _____ account.

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To participate in the marketplace, developers must agree to _____'s "Developer Payment Terms" and users must agree to "Community Payment Terms." _____ proposes to amend the Developer Payment Terms and Community Payment Terms to implement an agent-payee relationship between _____ and developers.

_____ proposes to add the following language to the Developer Payment Terms: "You appoint _____ as your limited payment collection agent for the sole purpose of accepting payment on your behalf from users for content you offer on _____ and, depending on the region, applicable taxes and fees. You agree that: (1) payment made by a user to _____ constitutes payment made directly to you and fully satisfies the user's obligation to you for that payment, and you must fulfill your obligations to the user as if you had received the payment directly from the user. . . ." The amended Developer Agreement will also state that _____ is responsible for remitting to developers any payments received from users on a developer's behalf. If _____ does not remit funds from users due to developers pursuant to the Agreement, developers will only have recourse against _____.

_____ also proposes to add the following language to the Community Payment Terms: "_____ serves as a limited payment collection agent of developers offering content on _____, and is authorized to accept payment from you on behalf of the developers for the purchase of that content. Your full payment to _____ of the transaction price for purchased content constitutes payment to the relevant developer and satisfies your payment obligation to the developer for the purchased content."

MONEY TRANSMISSION ACT

The Money Transmission Act prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.[5] Financial Code section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

_____ receives money from users in U.S. bank accounts and then transfers the money to the bank accounts of developers. This constitutes receiving money for transmission pursuant to Financial Code section 2003, subdivision (u). _____ is already licensed by the Department. The transactions it facilitates in the online games marketplace are subject to reporting requirements unless an exemption applies.

Financial Code section 2010, subdivision (l) exempts from the Money Transmission Act transactions in which the transmitter is an agent of the payee pursuant to a preexisting

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[5] Fin. Code, §2030, subd. (a).

written contract and delivery of the money to the agent satisfies the payor's obligation to the payee for the goods or services provided.

To sell digital goods on _____'s online games marketplace, developers must agree to the Developer Payment Terms. _____ proposes to amend the Developer Payment Terms to state that a developer appoints _____s as a limited payment collection agent to accept payment on the developer's behalf from users for content offered by the developer. The amended Developer Payment Terms will also state that payments made by a user to _____ fully satisfy the user's obligation to the developer. The requirements of Section 2010, subdivision (l) are satisfied because _____ will act as the agent of the payee pursuant to a preexisting written contract and receipt of payment by _____ will satisfy the user's (payor's) obligation to the developer (payee). Therefore, transactions[6] facilitated by _____ in the online games marketplace will not be subject to reporting requirements.

The Department's determination is limited to the transactions discussed in this letter and does not extend to _____' other services. The Department expects _____ to continue reporting other services performed pursuant to its California money transmission license.

This opinion is based solely on the facts represented in your correspondence. If any of the facts or circumstances change, the Department's opinion may also change. If you have any questions, please feel free to contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

    By

        Pamela Nakagawa
        Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco

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[6] Transactions mean a developer's sale of digital goods to users via in-game purchases.